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No. 14-1209

IN THE

Supreme Court of the United States

JOHN STURGEON,

Petitioner,

v.

SUE MASICA, IN HER OFFICIAL CAPACITY AS ALASKA REGIONAL DIRECTOR OF THE NATIONAL PARK SERVICE *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

AMICI CURIAE BRIEF OF AHTNA, INCORPORATED, ALEUT CORPORATION, BRISTOL BAY NATIVE CORPORATION, CALISTA CORPORATION, DOYON, LIMITED, NANA REGIONAL CORPORATION, GANA-A' YOO, LIMITED, AND TIHTEET' AII, INCORPORATED IN SUPPORT OF PETITIONER

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I. Interest of the *Amici Curiae*.[1]

The *amici curiae* have an extraordinary interest in this case because they own over 12 million acres of lands that lie within the boundaries of Alaska conservation system units ("CSUs")—an area about 150% larger than Maryland. Under the Ninth Circuit panel's decision, these lands would be subject to highly restrictive CSU regulations, likely making meaningful economic development impossible. Several of the *amici curiae* currently are pursuing resource development projects on these lands, including mining and oil and gas projects on which millions of dollars have already been spent. The Ninth Circuit decision casts significant doubt on these projects and significantly alters and diminishes the Congressional settlement of Native land rights under the Alaska Native Claims Settlement Act ("ANCSA").[2]

Representative John Seiberling sponsored the amendment that became §103(c) of the Alaska National Interest Lands Conservation Act ("ANILCA"), 16 U.S.C. §3103(c). Upon introducing it, and in response to skeptical questioning concerning its effect, Representative Seiberling explained to Congress that the provision

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1. The parties have consented to the filing of this brief. Counsel of record for all parties received notice at least 10 days prior to the due date of the *amici curiae*'s intention to file this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amici curiae*, their shareholders, or their counsel made a monetary contribution to its preparation or submission.

2. 43 U.S.C. §1601–1629h.

would establish "beyond any doubt" that State, Native or private lands that lie within the external boundaries of CSUs in Alaska would not be "subject to *any* of the laws or regulations that pertain to U.S. public lands" or "controlled by *any* of the public land laws of the United States." 125 Cong. Rec. 11158 (1979) (emphasis added). Representative Mo Udall, the House sponsor of ANILCA, assured Congress the inclusion of Native lands within CSU boundaries would not "restrict use of such lands by the owning Corporations." 125 Cong. Rec. 9905 (1979). Now, more than 35 years later, a panel of the Ninth Circuit has ignored these statements, and instead has adopted an interpretation of §3103(c) that directly contradicts them. According to the panel, §3103(c) gives federal conservation agencies, like the National Park Service, virtually unfettered discretion to regulate these State, Native or private lands. The Ninth Circuit's holding contradicts the purposes of ANCSA and would significantly harm the interests of the *amici curiae*.

This brief is submitted on behalf of Alaska Native Regional Corporations Ahtna, Incorporated, The Aleut Corporation, Bristol Bay Native Corporation, Calista Corporation, Doyon, Limited, and NANA Regional Corporation, and Alaska Native Village Corporations Gana-A' Yoo, Limited, and Tihteet' Aii, Incorporated. The *amici curiae* were created pursuant to ANCSA, and represent the interests of more than 60,000 Alaska Native shareholders, many of whom have limited incomes and live in remote locations in rural Alaska.[3]

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3. The *amici* also agree with the *amicus* briefs filed by Arctic Slope Regional Corporation and the State of Alaska.

ANCSA, enacted in 1971, represented a historic new federal policy for Alaska Natives.[4] ANCSA was an alternative to the system of reservations and federal trust supervision that had formed the basis for American Indian policy since the early 1800s. In ANCSA, Congress extinguished the aboriginal land claims of Alaska Natives, and as compensation granted approximately 40 million acres of land to Alaska Native Corporations, including the *amici curiae*.[5] ANCSA granted these lands to them for purposes of economic development and other uses, to allow Alaska Natives to control of their own financial destiny. The Native Corporations selected many of these lands based on their economic development potential.

The Regional Corporations' development of these lands for the benefit of all Alaska Natives is a fundamental part of the financial settlement Congress created in ANCSA. Under ANCSA Section 7(i), 43 U.S.C. §1606(i), each Regional Corporation is required to share seventy

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4. This Court addressed ANCSA's purposes in *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520, 523-24 (1998).

5. The land provisions of ANCSA are complex, but can be summarized as follows: ANCSA granted up to 22 million acres of surface estate to Village Corporations. ANCSA also granted to Regional Corporations the subsurface (mineral) estate beneath those Village surface lands, and approximately 18 million acres of additional surface and subsurface estate. *See* 43 U.S.C. §§1610, 1611, and 1613. In addition, ANCSA granted about 4 million acres of surface and subsurface estate to Village Corporations on revoked Indian reservations that opted not to accept any further benefits of ANCSA. 43 U.S.C. §1619. As further compensation, ANCSA also provided for the grant of $962.5 million to Native Corporations in payments terminating in 1981. 43 U.S.C. §1609.

percent (70%) of the revenues from resource extraction with the other land-owning Regional Corporations. Under Section 7(j), 43 U.S.C. §1606(j), one-half of the revenues that are received by a Regional Corporation under Section 7(i) is distributed to the Village Corporations located within its regional boundaries, and to its "at large" shareholders (those not enrolled to a Village Corporation). Thus, resource revenues from ANCSA lands flow directly or indirectly to all Natives.

The ability to develop these ANCSA lands and to share the revenues with all Natives under 43 U.S.C. §1606(i) and (j) is integral to the success of ANCSA. Well over $1 billion derived from resource development of ANCSA lands has been distributed under 43 U.S.C. §1606(i) and (j) since 1971.

In 1980, nine years after the enactment of ANCSA, Congress enacted ANILCA,[6] which placed about 105 million acres of federal lands in new or expanded CSUs. Congress sought to include entire ecosystems in CSUs. Thus many of the CSUs completely surrounded ANCSA lands. The amount of ANCSA lands that fell within these CSUs is staggering: the *amici curiae* alone own about 12 million acres within ANILCA CSUs,[7] comprising about 30% of all ANCSA lands; all ANCSA Corporations

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6. Pub. L. 96-487, 94 Stat. 2371 (1980).

7. Some of the *amici curiae*'s land holdings in CSUs are surface estate only, some are subsurface only, and some are both surface and subsurface. The ANCSA lands within CSUs represent from about 20% to 100% of the total ANCSA entitlements of the individual *amici*. The small portion of CSU lands within pre-ANCSA Wildlife Refuges is also subject to federal regulation pursuant to 43 U.S.C. §1621(g), and 16 U.S.C. §3143.

together own approximately 18 million acres within ANILCA CSUs, or about 40% of all ANCSA lands—an area larger than 10 of the states.[8]

Placing these CSUs over existing ANCSA lands would directly threaten the success of the ANCSA land settlement. Thus, the ANCSA Corporations sought inclusion of a provision in ANILCA to protect their lands from being affected by the CSUs. The result was §3103(c), in which Congress excluded ANCSA and State lands from the CSUs surrounding them and exempted them from the regulations written to govern the CSUs.[9] By reaching this solution, Congress recognized and accommodated its purposes in enacting both ANCSA and ANILCA, and granted a priority to the uses of ANCSA lands where ANCSA and ANILCA lands coincide.

However, without even *mentioning* ANCSA, the Ninth Circuit panel reached an interpretation of §3103(c) that would subject up to 40% of all ANCSA lands to restrictive CSU regulations. That holding breaks the promise made in ANCSA to Alaska Natives. It directly conflicts with the important Congressional purposes underlying ANCSA, and with the language, structure, and policy of §3103(c).

II. Summary of the Argument

A writ of certiorari is appropriate because the interpretation of §3103(c) is "an important question of federal law that has not been, but should be, settled by this

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8. *See* map, Exhibit 1.

9. Although this case arises in relation to the State's ownership of the bed and banks of a navigable river, §3103(c) also applies to Native owned uplands.

Court." Sup. Ct. R. 10(c). Section 3103(c) resolves conflicts in land ownership and land use arising under ANCSA and ANILCA, two statutes of national significance. ANILCA was a direct outgrowth of ANCSA. ANCSA extinguished the aboriginal land claims of Alaska Natives. In exchange, Congress conveyed approximately 40 million acres of land and $962.5 million to Alaska Native Corporations to assist Alaska Natives in achieving financial independence and self-sufficiency. The interpretation of §3103(c) could significantly impair the accomplishment of this critical federal purpose. Therefore, this Court should decide the question.

This Court should also grant certiorari because the Ninth Circuit panel reached its interpretation of §3103(c) in a way that conflicts with relevant decisions of this Court regarding the interpretation of statutes. *See* Sup. Ct. R. 10(c). Specifically, the panel (1) read §3103(c) in a way that would render the first and third sentences meaningless, (2) failed to read §3103(c) in light of ANILCA as a whole, (3) failed to consider ANCSA, the historic settlement that laid the groundwork for the passage of ANILCA, and (4) read §3103(c) in a way that leads to an absurd result. In addition, the panel selectively quoted and inaccurately characterized several key pieces of legislative history in a way to suggest they support its interpretation of the statute. In reality, the legislative history of ANILCA uniformly contradicts the panel's decision.

III. Argument

A. The interpretation of §3103(c) is an important question of federal law that has not been, but should be, settled by this Court

Section 3103(c) establishes a statutory priority to resolve conflicts in land ownership and land use arising under ANCSA and ANILCA, two enactments of national significance. The interpretation of §3103(c) is a question that should be settled by this Court because of the substantial impact that it could have on the nationally important Native settlement embodied in ANCSA. Under the Ninth Circuit panel's interpretation, up to 18 million acres of lands conveyed to Alaska Natives pursuant to ANCSA could become undevelopable, thus defeating the Congressional purpose of ANCSA and breaking the promise of ANCSA to Natives. If this is the proper interpretation of §3103(c), then this Court should be the judicial body that says so.

ANILCA was a "direct outgrowth" of ANCSA. 125 Cong. Rec. 9905 (1979) (comment by Representative Mo Udall, the primary sponsor of ANILCA in the House); *see also Amoco Production Co. v. Village of Gambell, Alaska*, 480 U.S. 531, 549 (1987) ("ANILCA's primary purpose was to complete the allocation of federal lands in the State of Alaska, a process begun with the Statehood Act in 1958 and continued in 1971 in ANCSA."). In ANCSA, Congress extinguished the aboriginal land claims of Alaska Natives. *See* 43 U.S.C. §1603. To compensate Alaska Natives for the loss of these claims, Congress authorized the conveyance of approximately 40 million acres of land and payment of $962.5 million to newly-

formed Alaska Native Corporations. *City of Angoon v. Marsh*, 749 F.2d 1413, 1414 (9th Cir. 1984). Congress knew that the overwhelming majority of this land would "be selected for its economic potential." *Koniag, Inc. v. Koncor Forest Resource*, 39 F.3d 991, 996 (9th Cir. 1994) (quoting H.R. Rep. 92-523 at 5, 1971 U.S.C.C.A.N. at 2195). Most importantly for purposes of this case, Congress intended "that those Native corporations that did select land for its economic potential would be able to develop that land and to realize that potential." *Id.* at 997. An integral part of the settlement was the requirement to share 70% of the proceeds of subsurface and timber resource development with other land-owning Regional Corporations, and in turn with all Village Corporations, under 43 U.S.C. §1606(i) and (j). These revenue sharing requirements "achieve a rough equality of assets among all the Natives." *Chugach Natives, Inc. v. Doyon, Ltd.*, 588 F.2d 723, 732 (9th Cir. 1978) (citations and quotations omitted).

This approach constituted a significant departure from lower forty-eight Indian policy. In §2 of ANCSA, Congress explained that its intent was to resolve aboriginal land claims "in conformity with the real economic and social needs of Natives,...with maximum participation by Natives in decisions affecting their rights and property,... without creating a reservation system or lengthy wardship or trusteeship." 43 U.S.C. §1601(b). As this Court has recognized, ANCSA was an effort by Congress to "end the sort of federal supervision over Indian affairs that had previously marked federal Indian policy." *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520, 523-24 (1998). Instead, ANCSA tasked Alaska Natives themselves "to develop that land and to realize that [economic] potential." *Koniag*, 39 F.3d at 997. Accordingly,

the ability of Alaska Native Corporations to develop the lands conveyed to them was absolutely essential to the promise of ANCSA.

With this promise in place, Alaska Native Corporations were greatly concerned when it became apparent nine years later that much of their ANCSA land would fall within the boundaries of the CSUs that were to be created or expanded by ANILCA. They fought vigorously for the inclusion in ANILCA of provisions that would preserve the economic potential of these lands. *See, e.g.*, 126 Cong. Rec. 21882 (1980) (referencing concerns of Doyon, Limited president Tim Wallis). These efforts, and those of the State of Alaska, were the genesis of §3103(c). *See, e.g.*, 125 Cong. Rec. 11158 (1979) (Representative John Seiberling, the sponsor of the amendment that became §3103(c), explaining that he offered the provision to make clear that non-public lands within the external boundaries of new or expanded CSUs would not be "subject to any of the laws or regulations that pertain to U.S. public lands.").

The Ninth Circuit panel's decision that millions of acres of ANCSA lands—40% of all ANCSA lands—are subject to highly-restrictive conservation regulations would decimate the economic value of those lands. Such a result would fundamentally alter the tradeoff at the heart of ANCSA: the grant of approximately 40 million acres of land to Alaska Natives as compensation for the total extinguishment of their aboriginal land claims. This historic compromise served two critical national purposes, one of which—extinguishment of Alaska Native aboriginal title—has already been accomplished. The accomplishment of the second purpose—securing the economic futures of Alaska Natives—is an ongoing concern that, as the Ninth Circuit panel's decision demonstrates, will be significantly

impacted by the interpretation of §3103(c). As such, this case presents an important question of federal law that should be decided by this Court.

B. The Ninth Circuit panel reached its interpretation of §3103(c) in a way that conflicts with relevant decisions of this Court

A grant of certiorari is also appropriate because the Ninth Circuit panel interpreted §3103(c) in a way that conflicts with relevant decisions of this Court regarding the construction of statutes. Focusing entirely on nine words in the second sentence—"regulations applicable solely to public lands within such units"—the panel concluded that §3103(c) exempts non-public lands (including ANCSA lands) from Alaska-specific CSU regulations but leaves them subject to nationwide CSU regulations. In reaching this strained and artificial interpretation, the panel ignored four basic principles of statutory construction established by this Court.

First, the panel failed to read §3103(c) in a way that gives effect to every word in the statute. Under its interpretation, the first and third sentences of §3103(c) would be rendered meaningless.

Second, the panel failed to interpret §3103(c) in light of ANILCA as a whole. Other provisions of ANILCA demonstrate that Congress exempted non-public lands (including ANCSA lands) from *all* CSU regulations, not just Alaska-specific regulations.

Third, the panel failed to consider an important precedent that would have greatly informed its analysis.

In reaching a conclusion that would significantly impact the land rights of Alaska Natives, the panel made no mention whatsoever of ANCSA, the historic legislation that granted those rights.

Fourth, the panel interpreted §3103(c) in a way that would lead to an absurd result. Specifically, its holding would leave non-public Alaska lands subject to nationwide CSU regulations while exempting them from Alaska-specific CSU regulations, which are generally more permissive than nationwide regulations.

Fifth, compounding these errors, the panel suggested that its strained reading of the statute is supported by the legislative history of ANILCA. This is absolutely, unequivocally incorrect. Every single piece of legislative history cited by the panel actually demonstrates that Congress intended to exempt non-public lands from all CSU regulations. There is no legislative history supporting the panel's holding. Only through selective editing was the panel able to reach a different conclusion.

1. The Ninth Circuit panel interpreted §3103(c) in a way that renders its first and third sentences meaningless

"It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (citations and quotations omitted). The Ninth Circuit panel violated this "cardinal principle" by fixing its attention entirely on the second sentence of §3103(c), rendering the first and

third sentences meaningless. Congress wrote the three sentences of §3103(c) to work together as a comprehensive whole.

The first sentence states: "Only those lands within the boundaries of any conservation system unit which are public lands (as such term is defined in this Act) shall be deemed to be included as a portion of such unit." This sentence establishes that non-public lands (including ANCSA lands) lying within the external boundaries of a CSU are not part of the CSU merely by virtue of that geographic fact.

The second sentence states: "No lands which, before, on, or after December 2, 1980, are conveyed to the State, to any Native Corporation, or to any private party shall be subject to the regulations applicable solely to public lands within such units." This sentence is a direct complement to the first and means that ANCSA land that is not part of a CSU will not be regulated as such simply because it lies within the external boundaries of the CSU.

The third sentence states: "If the State, a Native Corporation, or other owner desires to convey any such lands, the Secretary may acquire such lands in accordance with applicable law (including this Act), and any such lands shall become part of the unit, and be administered accordingly." This sentence explains how the acquisition of land by the relevant Secretary alters the state of affairs established by the first two sentences: the lands "become part of the unit" and are "administered accordingly." Logically, until such lands are acquired, they are not administered as "part of the unit."

Giving effect to all three sentences, as this Court's precedents require, the meaning of §3103(c) becomes clear: non-public lands within the boundaries of a CSU are not part of the CSU and will not be regulated as though they are, unless they are acquired by the federal government. However, the Ninth Circuit panel gave undue attention to the second sentence, not only distorting its meaning but also rendering the first and third sentences meaningless. That is, if the second sentence subjects non-public land to regulations governing a CSU, then the land is, for practical purposes, "a portion of" the CSU (contrary to the first sentence), and it can be "administered accordingly" even if it is never acquired by the Federal Government (contrary to the third sentence). The panel's interpretation thus renders first and third sentences of §3103(c) superfluous or void.

2. The Ninth Circuit panel failed to read §3103(c) in light of other relevant provisions of ANILCA

The Ninth Circuit panel failed to comply with this Court's admonition that provisions of ANILCA "must be viewed in the context of the Act as a whole." *Amoco*, 480 U.S. at 549; *see also U.S. Nat'l Bank of Oregon v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 438, 455 (1993) ("In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy."); *Dada v. Mukasey*, 554 U.S. 1, 16 (2008) ("In reading a statute we must not look merely to a particular clause, but consider in connection with it the whole statute."). When viewed in the context of ANILCA as a whole, §3103(c) exempts ANCSA lands from all CSU regulations.

The Ninth Circuit panel began its analysis of §3103(c) by citing the first section of ANILCA, which explains that the Act serves both environmental *and* economic purposes, in that it "provides sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska, *and at the same time provides adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people*[.]" 16 U.S.C. §3101(d) (ANILCA §101(d)) (emphasis added). However, the panel then immediately mischaracterized a passage from an earlier Ninth Circuit decision to suggest that ANILCA is a predominantly conservational measure: "Summarized succinctly, 'ANILCA is generally concerned with the designation, disposition, and management of land for environmental preservation purposes.' *Stratman v. Leisnoi, Inc.*, 545 F.3d 1161, 1165 (9th Cir. 2008)." Op. 19.

What the Ninth Circuit actually said in *Stratman* was this: "*Although* ANILCA is generally concerned with the designation, disposition, and management of land for environmental preservation purposes, *part of ANILCA is devoted to the implementation and cleanup of ANCSA*." 545 F.3d at 1165 (emphasis added; citation omitted). The panel's careful avoidance of the ANCSA reference is telling. Of ANILCA's 180 pages, only about 45 related to the creation or expansion of CSUs (*see* Titles II-VII), while most of the remaining 135 were made up of compromise provisions addressing various ANCSA and State concerns (*see, e.g.*, Titles VIII-XIV and parts of Title I). Contrary to the panel's suggestion, ANILCA was not only directed at environmental protection—it was also directed at implementing ANCSA.

Several provisions of ANILCA demonstrate that non-public lands within the external boundaries of Alaska CSUs are generally exempt from CSU regulations. Most notably, 43 U.S.C. §1635(o)(2) (ANILCA §906(o)(2)) provides, "*Until conveyed* [to a Native Corporation or the State], all Federal lands within the boundaries of a conservation system unit...shall be administered in accordance with the laws applicable to such unit." (Emphasis added.) The obvious corollary to this requirement is that once lands within the boundaries of a CSU are conveyed to a Native Corporation or the State, they shall *not* "be administered in accordance with the laws applicable to such unit." If this were not the case, 43 U.S.C. §1635(o)(2) would be entirely superfluous.

Congress included §3103(c) in addition to §1635(o)(2) because all CSUs were described in ANILCA by reference to maps, and not legal descriptions. Section 3103 is titled "Maps," and subsection (c) was added to clarify that non-public lands that lie within the boundaries of a CSU as depicted on an ANILCA map are not part of the CSU, or subject to the regulations governing the CSU. The Congressman who introduced the language that became §3103(c), John Seiberling, explained on the House floor that this was the precise purpose of the provision:

> Mr. Chairman, what [§3103(c)] does is say that the fact that [State, native, or private land] is within the boundaries drawn on the map for that conservation unit does not in any way change the status of that State, native, or private land or make it subject to *any* of the laws or regulations that pertain to U.S. public lands, so that those inholdings are clearly not

> controlled by *any* of the public land laws of the United States.

125 Cong. Rec. 11158 (1979) (emphasis added). Far from creating a distinction between Alaska-specific and nationwide regulations, §3103(c) clarified that non-public lands would not be subject to *any* CSU regulations, notwithstanding their location on an ANILCA map. Only by reading the second sentence of §3103(c) in isolation was the Ninth Circuit panel able to reach a different conclusion.

Two other provisions of ANILCA that make clear that non-public lands within the boundaries of CSUs are generally exempt from CSU regulations are §304(f) (94 Stat. 2394) and §907(a) (43 U.S.C. §1636(a)). Those sections provide that non-public land becomes subject to federal management if the owner agrees in writing to such management. If this land were already subject to federal management, as the Ninth Circuit panel held, these provisions would be unnecessary.

3. The Ninth Circuit panel failed to read §3103(c) in light of the key purposes of ANCSA

Despite the fact that §3103(c) expressly applies to lands owned by Alaska Native Corporations, and despite its decision's dramatic effect on ANCSA lands and Alaska Natives, the Ninth Circuit panel did not even *mention* ANCSA in its opinion. This Court has held that a statute should be interpreted in light of "any precedents or authorities that inform the analysis." *Dolan v. U.S. Postal Service*, 546 U.S. 481, 486 (2006). If ANCSA, the historic

precursor to ANILCA, does not "inform the analysis" of §3103(c), then ANILCA took back what ANCSA promised to Alaska Natives in return for giving up their aboriginal rights.

No provision of ANILCA that addresses the rights and interests of Alaska Natives, particularly §3103(c), can be fully understood without also understanding the purposes of ANCSA. As discussed in detail in section III.A, above, Congress, in ANCSA, granted approximately "40 million acres of land to Alaska Natives as compensation for extinguishment of their claims *and to assist them in achieving financial independence and self-sufficiency.*" *City of Angoon*, 749 F.2d at 1414 (emphasis added). The Ninth Circuit panel's interpretation of §3103(c) rendered millions of those acres essentially valueless without so much as noting this vital purpose.[10] When read against the backdrop of ANCSA, one critical intention of §3103(c) becomes abundantly clear: to preserve the economic value of lands conveyed to Native Corporations by exempting them from regulations written to govern CSUs.

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10. Notably, the Ninth Circuit panel that decided *City of Angoon v. Marsh* relied heavily on ANCSA in concluding that Native Corporation lands within the external boundaries of the Admiralty Island National Monument are not "within" the Monument and therefore are not subject to a timber harvesting ban applicable to the Monument. *See, e.g.*, 749 F.2d at 1416 (citing ANCSA §22(i) (43 U.S.C. §1621(i)) in support of its conclusion that "Congress has made it clear that the Secretary cannot manage private lands which have been conveyed to a Native Corporation"). That panel also cited ANILCA §103(c) as support for its conclusion that "the drafters of ANILCA never intended the mere location of boundary lines on maps delineating the overall conservation system to indicate that private lands conveyed to Native Corporations were to be treated as public lands." *Id.* at 1417-18.

This Court has only interpreted one section of ANILCA, and when it did, it relied in part on related sections of ANCSA. In *Amoco*, this Court addressed whether ANILCA §810, a subsistence rights provision, applies to the outer continental shelf. In deciding that it does not, this Court cited three pertinent sections of ANCSA. *See* 480 U.S. at 552 (citing 43 U.S.C. §§1602(e), 1610(a), and 1611). *Amoco* demonstrates that considering the history and purposes of ANCSA is absolutely critical to a full understanding of any provision of ANILCA that concerns Alaska Native rights. In this case, the Ninth Circuit panel did not say a word about ANCSA.

4. The Ninth Circuit panel interpreted §3103(c) in a way that leads to an absurd result

This Court has instructed that an interpretation of a statute that leads to an absurd result should be avoided if there is a reasonable alternative interpretation. *See, e.g.*, *Tarrant Regional Water Dist. v. Herrmann*, 133 S. Ct. 2120, 2131 (2013); *United States v. Wilson*, 503 U.S. 329, 334 (1992). The panel's strained interpretation leads to an absurd result that was readily avoidable.

Under the panel's interpretation of §3103(c), non-public lands (including ANCSA lands) that are situated within the external boundaries of Alaska CSUs would be subject to nationwide CSU regulations but would be exempt from Alaska-specific CSU regulations. However, the National Park Service has itself recognized that Alaska-specific regulations "generally are relaxations of prohibitions contained in the general regulations." *See* 61 Fed. Reg. 35134 (1996). It is an absurd result for non-public lands to

be subject to greater use restrictions than the surrounding CSUs.

5. The Ninth Circuit panel offered a selectively edited version of the legislative history of ANILCA to support its interpretation of §3103(c)

Compounding the serious interpretive errors discussed above, the Ninth Circuit panel suggested that the legislative history of ANILCA confirms its reading of §3103(c). Nothing could be further from the truth. None of the materials cited by the panel indicate that Congress ever contemplated a distinction between Alaska-specific regulations and nationwide regulations. Rather, they uniformly support the conclusion that §3103(c) exempts non-public lands within the boundaries of CSUs from *all* CSU regulations. The panel was able to reach a different result only by selective quotation to omit the language that directly contradicts its holding.

The panel began by quoting part of a statement made by Representative Seiberling in support of his proposed addition of §3103(c). Specifically, the panel observed that "[t]he first sentence of §3103(c) makes clear that the boundaries of CSUs 'do[...] not in any way change the status of that State, native, or private land' lying within those boundaries." Op. 21 (quoting 125 Cong. Rec. 11158 (1979)). The panel's reliance on this passage is puzzling. Before ANILCA, the "status" of these lands was that they did not lie within CSUs and therefore were not subject to regulations governing CSUs. Representative Seiberling's explanation—that he offered §3103(c) to ensure that this status would not change—conflicts starkly with the panel's interpretation of the provision.

The Ninth Circuit panel chose to omit the remainder of the sentence in which the above-quoted passage appeared. The omitted portion directly contradicts the Ninth Circuit's holding. Representative Seiberling stated, in full:

> Mr. Chairman, what [§3103(c)] does is say that the fact that [State, native, or private land] is within the boundaries drawn on the map for that conservation unit does not in any way change the status of that State, native, or private land *or make it subject to any of the laws or regulations that pertain to U.S. public lands, so that those inholdings are clearly not controlled by any of the public land laws of the United States.*

125 Cong. Rec. 11158 (emphasis added). Representative Seiberling's actual words establish that under §3103(c) non-public lands that fall within the external boundaries of CSUs as a result of ANILCA would not be subject to "*any* of the laws or regulations that pertain to" the CSUs, regardless of whether the regulations are applicable nationwide or only in Alaska. *See also id.* at 11156 (Representative Seiberling explaining that his amendment "makes it clear that any lands, State, native or private lands, which lie within the outer boundaries of the conservation unit in the Udall bill *are not subjected to regulations which are applied to public lands.*") (emphasis added). By citing only part of this passage, the Ninth Circuit altered its meaning to be the opposite of what Representative Seiberling actually said.

The panel also noted that Representative Seiberling "offered the view that his amendment 'restate[d] and

ma[de] clear' that nonfederal lands within CSUs would not be 'subject to regulations which are applied to public lands which, in fact, are part of the unit.'" Op. 24 (citing 125 Cong. Rec. 11158). This statement does not support the panel's reading of §3103(c). Representative Seiberling was emphasizing, again, that non-public lands would not be subject to *any* regulations written to govern the CSUs, whether Alaska-specific or nationwide. The Ninth Circuit panel did not mention Representative Seiberling's explanation on the same page of the Congressional Record that he offered his amendment to reinforce the existing text of the bill, which, he believed, "does not alter in any way the ability of the State or Natives *to do what it will* with those lands." 125 Cong. Rec. 11158 (emphasis added). This also plainly contradicts the panel's holding.

Next, the panel observed that Representative Mo Udall, the primary sponsor of ANILCA in the House, "declared that nonfederal land would not be constrained by 'regulations applicable to the public lands within the specific conservation system unit.'" Op. 24 (citing 125 Cong. Rec. 9905 (1979)). The panel did not explain how this statement supports its interpretation of §3103(c). Presumably, the panel would say that Representative Udall used the phrase "the specific conservation system unit" in order to create a distinction between regulations applicable nationwide and regulations applicable only in Alaska CSUs. This is incorrect. Representative Udall's full statement, which the Ninth Circuit panel omitted from its opinion, demonstrates an intent identical to Representative Seiberling's. He said:

> I want to make clear that inclusion of these Native lands within the boundaries of

> conservation system units *is not intended to affect any rights which the corporations may have under this act, the Alaska Native Claims Settlement Act, or any other law, or to restrict use of such lands by the owning corporations* nor to subject the Native lands to regulations applicable to the public lands within the specific conservation system unit.

125 Cong. Rec. 9905 (emphasis added). Apparently, the panel chose to exclude the full text because Representative Udall's language directly contradicts its reading of §3103(c). By quoting only a few words from this sentence, the panel altered its meaning to be the opposite of what Congressman Udall actually said.

The panel also stated that a 1979 report by the Senate Committee on Energy and Natural Resources "notes that §103(c) would exempt non-Federal land from 'regulations which may be adopted to manage and administer any [CSU] which is adjacent to, or surrounds, the private or non-Federal public lands.'" Op. 24-25 (citing S. Rep. No. 96-413, at 303 (1979), *reprinted in* 1980 U.S.C.C.A.N. 5070, 5247). However, the panel extracted this language from a longer passage, the full text of which demonstrates that the Committee did not draw a distinction between nationwide and Alaska-specific CSU regulations:

> Those private lands, and those public lands owned by the State of Alaska or a subordinate political entity, are not to be construed as subject to the management regulations which may be adopted to manage and administer any national conservation system unit which is adjacent

> to, or surrounds, the private or non-Federal public lands. *Federal laws and regulations of general applicability to both private and public lands, such as the Clean Air Act, the Water Pollution Control Act, U.S. Army Corps of Engineers wetlands regulations, and other Federal statutes and regulations of general applicability would be applicable to private or non-Federal public land inholdings within conservations [sic] system units, and to such lands adjacent to conservation system units, and are thus unaffected by the passage of this bill.*

S. Rep. No. 96-413, at 303 (1979), *reprinted in* 1980 U.S.C.C.A.N. 5070, 5247 (emphasis added). The second sentence of this paragraph shows that the Committee's purpose was to establish that "private or non-Federal public lands" (including ANCSA and State lands) within CSUs, while not subject to regulations written specifically to govern CSUs, would still be subject to federal statutes and regulations that apply to *all* land in the United States, whether public or private.

The Committee's report also reveals why the word "solely" was included in the second sentence of §3103(c)—a reason quite different than the panel asserts. Without that word, the second sentence would exempt non-public lands within the external boundaries of CSUs from all "regulations applicable [...] to public lands within [CSUs]." *See* 16 U.S.C. §3103(c). Such language could be read to exempt these non-federal lands from "Federal laws and regulations of general applicability"—laws that apply to all lands in the United States—like those environmental

statutes the Committee used as examples: the Clean Air Act and the Water Pollution Control Act (the Clean Water Act). Tellingly, the Ninth Circuit panel omitted the Committee's second sentence in its opinion.

IV. Conclusion

For the foregoing reasons, this Court should grant certiorari.

Respectfully submitted,

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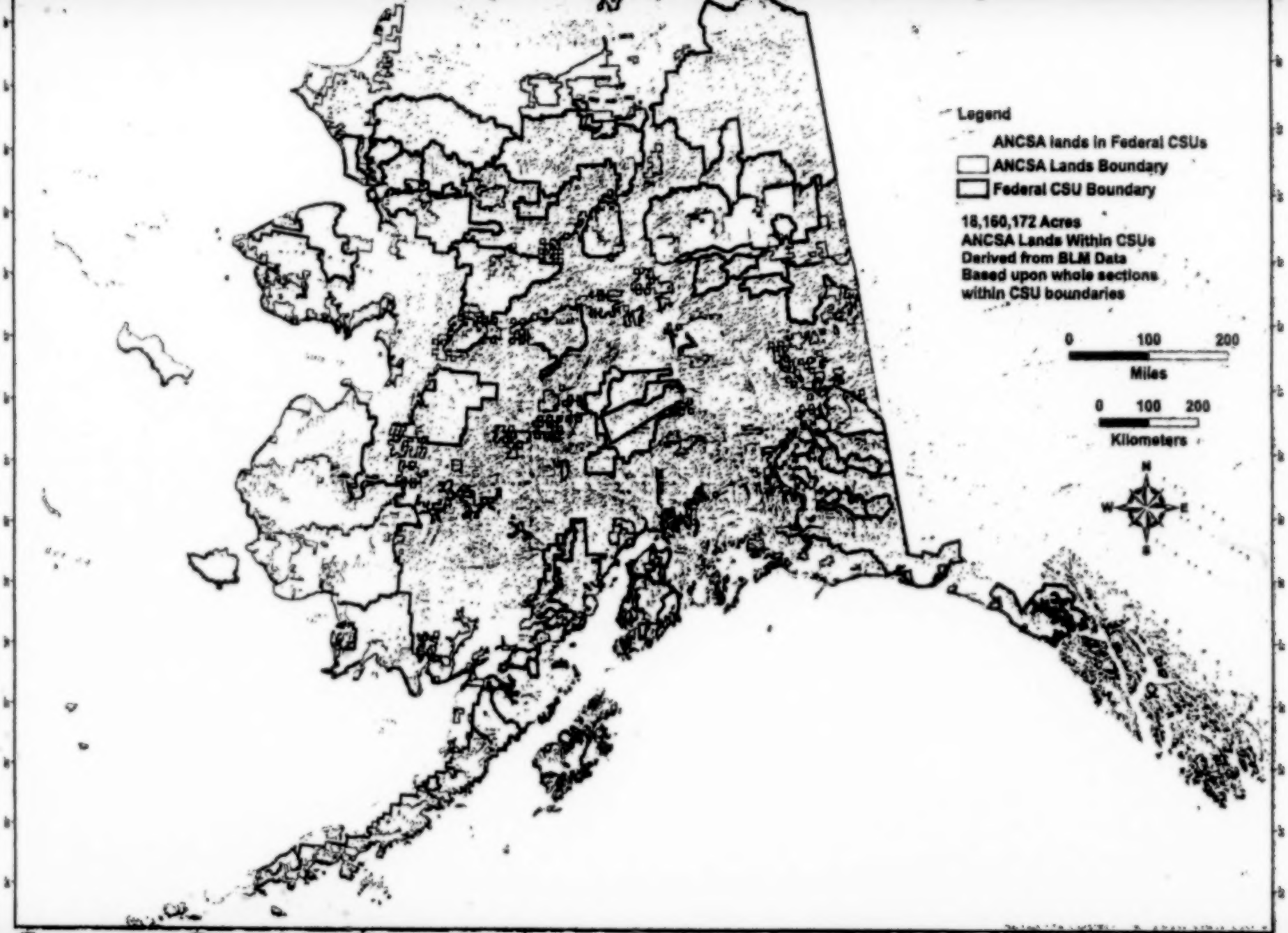
Date: April 29, 2015

EXHIBIT 1

MAP OF ANCSA LANDS WITHIN ALASKA FEDERAL CONSERVATION SYSTEM UNITS


Legend
ANCSA lands in Federal CSUs
ANCSA Lands Boundary
Federal CSU Boundary
18,160,172 Acres
ANCSA Lands Within CSUs
Derived from BLM Data
Based upon whole sections
within CSU boundaries
0 100 200
Miles
0 100 200
Kilometers
N
W
E
S